

August 30, 2005

Elaine A. Miles, Secretary
Sutter County Taxpayers Association
[Address Redacted]
Yuba City, CA 95993

Re: Your Request for Advice
Our File No. A-05-162

Dear Ms. Miles:

This letter is in response to your request for advice on behalf of the Sutter County Taxpayers Association (“SCTPA”) regarding the campaign provisions of the Political Reform Act (the “Act”).¹ This letter should not be construed to evaluate any conduct that may have already taken place. In addition, this letter is based on the facts presented. The Commission does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71; section 83114.)

QUESTION

You have asked a series of questions, outlined in the analysis below, related to the fundraising activities of SCTPA on behalf of the elected Sutter County Auditor-Controller, Robert Stark, and his assistant, Ronda Putman, and whether these activities give rise to any reporting requirements under the Act for SCTPA, Mr. Stark, or Ms. Putman.

CONCLUSION

It appears from the information provided in your request that SCTPA has received contributions which qualify it as a “committee” under the Act. As such, SCTPA will be required to file periodic reports disclosing its activities. These requirements are discussed in detail in the analysis.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS²

Sutter County Taxpayers Association (“SCTPA”) is a nonprofit organization that has existed for over 20 years in Sutter County. SCTPA monitors the activities of local government agencies, holds candidate and issue forums to educate the public, and engages in other activities to raise public awareness regarding growth, taxes, general plan changes, and similar issues. Recently, SCTPA began raising funds to assist in the legal defense of elected Sutter County Auditor-Controller Robert Stark and his assistant, Ronda Putman, who have been accused of malfeasance/misfeasance of office. Sutter County has declined to provide legal counsel to either of these employees. To date, you have raised approximately \$12,000.

ANALYSIS

- 1. What reporting and recordkeeping obligations, if any, will SCTPA incur as a result of its fundraising activities on behalf of Mr. Stark and Ms. Putman?*³

When an elected official receives a payment for which the official does not provide full and adequate consideration, the payment is considered either a contribution or a gift to the official, depending on the circumstances surrounding the payment. The Act defines “contribution” as a payment that is made to or at the behest of a candidate or elected official for political purposes and includes payments related to the official’s candidacy or status as an officeholder. (Section 82015; regulation 18215.) A “gift” is defined as a payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. (Section 82028.)

According to your facts, the litigation in question concerns alleged malfeasance/misfeasance of office on the part of Mr. Stark, who is an elected official. Because these allegations are related to his official duties, payments made by SCTPA for Mr. Stark’s legal defense will be considered contributions to him. In turn, funds raised by SCTPA for this purpose will be considered contributions to SCTPA, which will qualify the organization as a “committee” under the Act. Section 82013(a) defines “committee” to include any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. Because SCTPA is raising funds for a single candidate/elected officer, it will be considered a “primarily formed” committee under section 82047.5. The filing and recordkeeping requirements for such committees are outlined in the FPPC Campaign Disclosure Manual 2 (copy enclosed). Specifically, please note the following:

² These facts are based on your letter dated August 9, 2005, and our telephone conversation and your email of August 17, 2005.

³ Your correspondence asks specifically whether SCTPA is required to file the Form 700 (Statement of Economic Interests). The Form 700 is a personal financial disclosure statement required to be filed by certain state and local public officials, and would not be required of an organization such as SCTPA.

- Within 10 days of qualifying as a committee, SCTPA must file a Statement of Organization (Form 410, copy enclosed) with the Secretary of State. A copy of the form must be filed with the county elections officer. (Section 84101.) From the facts you have provided, it appears that SCTPA will be the committee's "sponsor" and SCTPA's name must be included in the name of the committee. (Sections 82048.7; 84101.) (See pages 4-10 through 4-16 of the manual.)
- SCTPA must file periodic campaign disclosure reports (Form 460)⁴ disclosing the funds it has raised and spent related to Mr. Stark's legal defense. Semi-annual filings will be due on July 31 (covering the period January 1 through June 30) and January 31 (covering the period July 1 through December 31) each year. (Section 84200.) Additional filings may be required if SCTPA engages in activities during an election. (Section 84200.5.) These filings will be made with the county elections officer and the county must make them available to the public. (Sections 81008; 84215(d).) (See Chapter 5 of the manual.)
- Individuals and entities that make cumulative monetary contributions of \$100 or more in a calendar year to SCTPA for Mr. Stark's legal defense must be itemized in detail on Form 460, along with expenditures and contributions made of \$100 or more. (Section 84211.) (See Chapter 6 of the manual.) Also, you should review the restrictions discussed in Chapter 9 of the manual, specifically the prohibitions on cash contributions and expenditures. There is no requirement to disclose the names of SCTPA members or its Board of Directors unless they contribute \$100 or more in a calendar year to the committee.
- SCTPA must keep detailed records of the money it raises and spends in connection with Mr. Stark's legal defense. (Section 84104.) (See Chapter 1 of the manual.) It is permissible to keep the committee records separate from records of the nonprofit organization. SCTPA may be required to make the committee records available to the Commission or the Franchise Tax Board in the event the committee is audited, but SCTPA's committee and other records are not required to be made available to the general public.
- Once SCTPA is no longer raising or spending funds for Mr. Stark's defense or any other campaign-related activities, please review the instructions for terminating the committee, beginning on page 8-3 of the manual.
- Only those funds raised or spent in connection with Mr. Stark's legal defense need to be counted or reported as "committee" activities. This would include a pro rata share of SCTPA's expenses that are attributable to raising funds for Mr. Stark. Funds raised and spent in connection with other SCTPA activities,

⁴ If SCTPA does not receive contributions totaling \$100 or more from a single source in a calendar year, it may be eligible to use the short form campaign disclosure statement (Form 450). Both the Form 450 and Form 460 are enclosed.

including Ms. Putman's legal defense, need not be reported on the committee's campaign statements.

With regard to Ronda Putman, because she is not a candidate or an elected official, payments made by SCTPA for her legal defense would be considered gifts to her. SCTPA has no requirement to publicly disclose or keep records of gifts it makes to public officials. However, if SCTPA receives funds totaling \$50 or more from a single source that are specifically earmarked for Ms. Putman's legal defense, you must provide her with SCTPA'S name and address as well as the name and address of the donor. (Section 87313.)

2. Are there limits on the amount that can be donated or contributed to SCTPA, Mr. Stark, or Ms. Putman?

Although the Act imposes limits on contributions received by candidates for elective state office and on committees that raise funds to support state candidates, there are no state limits on contributions to local officeholders or committees that support only local candidates. Accordingly, there are no limits on the amount that can be contributed to Mr. Stark in connection with his legal defense. However, you should consult with the county to determine whether there are local rules in effect limiting contributions.

Gifts to certain public officials and employees are subject to a limit of \$360 from a single source in a calendar year.⁵ (Section 89503.) State and local agencies are required to adopt a conflict-of-interest code designating those positions within the agency that involve the making of governmental decisions and requiring officials and employees holding those positions to file a Form 700 (Statement of Economic Interests) each year disclosing certain personal assets and income, including gifts. For officials designated in an agency's conflict-of-interest code, the gift limit would apply to sources the official is required to disclose. You stated during our telephone conversation of August 17, 2005, that Ms. Putman informed you she is not designated in a conflict-of-interest code and that you verified this information through a Public Records Act request with Sutter County. However, as stated previously, the Commission does not act as a finder of fact and, therefore, we make no determination whether payments for Ms. Putman's legal defense are subject to the gift limit.

3. What are Mr. Stark's and Ms. Putman's reporting requirements related to SCTPA's activities?

The Commission does not provide third-party advice and cannot advise SCTPA regarding Mr. Stark's and Ms. Putman's reporting requirements under the Act.

4. Does it make a difference if SCTPA writes checks directly to Mr. Stark and Ms. Putman, or whether checks are written to their attorneys?

⁵ The gift limit is adjusted each odd-numbered year to reflect changes in the Consumer Price Index. The gift limit for 2005-2006 is \$360. (Section 89503(f).)

No. In the case of Mr. Stark, funds paid directly to his attorney will be considered nonmonetary (in-kind) contributions to him. (*Roberti* Advice Letter No. A-91-292.) SCTPA's recordkeeping and reporting requirements, as outlined above, will be the same. Payments made on behalf of Ms. Putman would be considered gifts to her.

We recommend that you contact the Franchise Tax Board and Internal Revenue Service regarding any tax consequences related to SCTPA's fundraising activities for Mr. Stark and Ms. Putman.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Carla Wardlow
Chief, Technical Assistance Division

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